

HB 866 -- Spurious and False Liens

Sponsor: Hinson

This bill specifies that any state or local official or employee may accept or reject for recording or filing any document that he or she reasonably believes is not presented by a financial or lending institution and in good faith may be a spurious lien or document. A state or local official or employee is not liable to a person for accepting or rejecting for recording or filing of the document, and he or she is not obligated to accept for recording or filing any lien against a federal, state, or local official or employee based upon the performance or nonperformance of his or her official duties unless the lien or claim is accompanied by a specific order issued by a state or federal court authorizing the recording or filing of the lien or claim of lien.

The bill specifies that no spurious lien or document will hold or affect any real or personal property longer than 35 days after being recorded or filed, unless within the 35 days a court action has commenced to enforce the lien or document or a notice of lis pendens stating that the action has commenced and the notice has been recorded or filed in the office where the lien or document was recorded or filed. A person whose real or personal property is affected by a recorded or filed lien or document that the person believes is spurious may petition the court to show cause why the lien or document should be declared invalid. The order to show cause may be granted ex parte and must direct any lien claimant and any person who recorded or filed the lien or document to appear as a respondent before the court, no less than 14 days but no more than 21 days after service of the order, to show cause why the lien or document should be declared invalid; state that if the respondent fails to appear then the lien or document will be declared invalid; and state that the court must award costs, including reasonable attorney fees, to the prevailing party. If, after the hearing, the court determines the lien or document is spurious, then the court must make findings of fact and enter an order declaring the lien or document to be spurious and enter a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against any respondent and in favor of the petitioner. However, if the court determines the lien or document is not spurious, the court must enter an order and enter a monetary judgment in the amount of any respondent's costs, including reasonable attorney fees, against any petitioner and in favor of the respondent. A "spurious document" is defined as any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid. A "spurious lien" is defined as a purported lien or claim of a lien that is not in a specific state or federal statute or by a specific

municipal ordinance; created, suffered, assumed, or agreed to by the owner of the property it purports to encumber; or imposed by order, judgment, or decree of a state or federal court.

Currently, a person commits the crime of simulating legal process, a class B misdemeanor, if, with purpose to mislead the recipient and cause him or her to take action, he or she delivers or causes to be delivered a request for payment of money on behalf of any creditor that in form and substance simulates any legal process issued by a state court or summons, subpoena, or other legal process knowing that the process was not issued or authorized by any court. The bill increases the penalty to a class D felony if the victim is a law enforcement officer, peace officer, or first responder.

The bill creates the crime of filing a false lien, a class D felony. A person commits the crime if he or she files, attempts to file, or conspires to file in any public or private record a false lien or encumbrance against the real or personal property of a state or local elected official, judge, law enforcement officer, peace officer, firefighter, or first responder; targets the victim as a result of the official duties or title of the victim; and has knowledge or should have knowledge that the lien or encumbrance is false or contains materially false, fictitious, or fraudulent statements or representations.